THIRUCHELVASEGARAM MANICKAVASEGAR

v.

MAHADEVI NADCHATIRAM

HIGH COURT MALAYA, KUALA LUMPUR
AZMEL MAAMOR J
[CIVIL SUIT NO: S5-23-08-1997]
19 FEBRUARY 2003

CRIMINAL PROCEDURE: *Contempt of court - Member of Malaysian Bar - Disciplinary action - Submitting injuncted libelous materials to Investigating Tribunal - Whether in contempt of court - Whether communication not privileged - Committal order - Rules of High Court 1980, O. 52 r. 2(2) 1980 - Legal Profession Act 1976, ss. 101(4)(a)(i), 111 - Courts of Judicature Act 1948, s. 14(1)*

LEGAL PROFESSION: *Professional discipline - Contempt of court - Committal proceedings - Submitting injuncted libelous materials to Investigating Tribunal - Whether a serious misconduct - Whether merited committal order - Legal Profession Act 1976, ss. ss. 101(4)(a)(i), 111*

The plaintiff alleged that the defendant, while acting as an advocate and solicitor in a court proceeding ('the proceedings'), had made serious libelous statements against him. Consequent thereto, the plaintiff lodged a complaint to the Advocates and Solicitors Disciplinary Board ('the Board') and further sued the defendant for damages for defamation ('the Civil Suit'). On 22 January 2000, the learned judge hearing the Civil Suit found the defendant liable, and following that granted the plaintiff damages of RM3.5 million and issued a permanent injunction prohibiting the defendant from publishing, in any manner whatsoever, the libelous statements in question ('the injunctive order'). The defendant appealed against the said judgment. However, pending the appellate court's decision thereon, the defendant, in an apparent effort to explain her conduct in the proceedings, submitted various documents to the Advocates and Solicitors Investigating Tribunal ('the Tribunal') including the libelous materials aforesaid.

The plaintiff contended that the submission of the libelous materials to the Tribunal was contemptuous of the injunctive order, and in the circumstances, initiated committal proceedings against the defendant pursuant to O. 52 r. 2(2) Rules of the high Court 1980. Before the learned judge, the defendant argued that the disclosure of the libelous documents was not in breach of the injunctive order as the same was privileged, as well as mandatory under s. 101(4)(a)(i) Legal Profession Act 1976 ('the Act'). The plaintiff argued that the argument

was misconceived as the defendant did not enjoy absolute privilege at the proceedings before the Tribunal, and further that, in an action for committal proceedings, the defence of absolute privilege could not be pleaded. The main issue that arose was whether the defendant had contravened the injunctive order herein, and if so, whether a committal order is appropriate in the circumstances.

Held:

[1] The defendant had breached the order of permanent injunction of the court. Clearly, the injunctive order was still in force and effective at the time the defendant submitted the documents to the Tribunal. The fact that the defendant had filed an appeal to the Court of Appeal and that the appeal was heard but decision was reserved did not mean that the injunctive order was no longer in force. (p 760 d-e)

[2] Communication to the Board/Tribunal cannot be equated with communication to a court of law. Section 111 of the Act does not confer any judicial immunity to the defendant when she communicated with the Board/Tribunal. That section only confers protection to members of the Board/Tribunal. Therefore, proceedings before the Board/Tribunal cannot be equated to proceedings before a court of law where litigants also enjoy judicial immunity by virtue of s. 14(1) Courts of Judicature Act 1964. (pp 761 h & 762 a)

[3] It follows that in an action for committal proceedings, the defence of absolute privilege is not available to the defendant in the way it could be availed of in an action for defamation. The question of having no absolute immunity apart, it was also true that even communications to a court of law that contains defamatory statements could only be done within certain limits. (p 762 b-d)

[4] The defendant was only asked by the Tribunal to explain on her conduct at the proceedings. Nothing thus would have happened to the defendant if she decided not to give any explanation to the Tribunal, except that a date would be fixed for the hearing of the disciplinary action against her. Further, whatever explanation that she was obliged to give should be confined to events that had transpired at the proceedings. Therefore it was completely irrelevant of the defendant to have sent the Tribunal the notes of proceedings in the Civil Suit or her written submission therein or the Memorandum of Appeal to the Court of Appeal, knowing fully well that there was in force an injunctive order prohibiting her from publishing defamatory statements against the plaintiff. Clearly, the defendant had gone beyond the 'limit principle' as propounded in *Attorney General, Malaysia v. Manjit Singh Dhillon.* (pp 762 g-h & 763 a)

[5] The defendant had failed to create a doubt in the plaintiff's case and was guilty of the contempt of court as alleged. Having regard to the whole circumstances of the case, and the fact that this is a very serious offence committed by a senior member of the Malaysian Bar, a sentence of three months' imprisonment is fair and just. (p 763 c-d & 764 c)

[Defendant guilty of contempt of court; sentenced accordingly.]

Case(s) referred to:
Attorney General, Malaysia v. Manjeet Singh Dhillon [1991] 1 CLJ 216; [1991] 1 CLJ (Rep) 22 SC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 14(1)
Legal Profession Act 1976, s. 111
Rules of the High Court 1980, O. 52 r. 2(2)

For the plaintiff - Gurbachan Singh (Malik Imtiaz); M/s Syarikat M Segaram
For the defendant - M/s Mahadevi Nadchatiram & Partners

Reported by WA Sharif

JUDGMENT

Azmel Maamor J:
This is an application by the plaintiff by way of a notis usul under encl. 201 seeking for an order that the defendant be committed to prison for committing several contempts of this Honourable Court. The acts of contempt of the defendant as alleged by the plaintiff are as follows:

(a) on 27.11.2000, published or distributed to the Advocates & Solicitors Disciplinary Board and the Investigating Tribunal defamatory words against the Plaintiff in breach of the Order of Injunction dated 22.1.2000; and

(b) undermined the integrity of the Judicial System and Administration of Law, Malaysia and brought the administration of law into disrespect in making the Order of Injunction and award of damages made by the High Court Judge on 22.1.2000. The trite aim of the Defendant in enclosing the documents in her letter dated 27.11.2000 is to show directly or indirectly that the judgment given by the Judge against her is wrong and should not be followed.

The brief facts of the case that led to this action are as follows. It commenced when the plaintiff wrote a letter of complaint dated 27 January 1997 to the Advocates and Solicitors Disciplinary Board complaining against the conduct

of the defendant, who is an advocate & solicitor, practising under the name and style of Messrs. Mahadevi Nadchatiram & Partners. The gist of the complaint was:

> whilst acting as advocate & solicitor for the Defendants in the Seremban High Court Civil Suit No: 22-61-93 had made serious libelous and scandalous statements imputing criminal conduct on the part of the Plaintiff in a written submission dated 11.10.1993.

Arising from the plaintiff's complaint the Advocates & Solicitors Disciplinary Board issued a show cause letter dated 14 March 1998 to the defendant asking her to give an explanation. In compliance with that show cause letter the defendant gave her explanation in a letter dated 8 April 1998 to the said Disciplinary Board, in the form of a reply to the complaint letter by the plaintiff. Following that an investigating tribunal of the advocates & solicitors was established to investigate into the said complaint. In the meantime the Kuala Lumpur Civil Suit No. S2(S3)23-04-1997 which involved the plaintiff and the defendant was heard by YA Dato' James Foong and on 22 January 2000 the learned judge made an order against the defendant. Part of the said Order states as follows:

> Mahadevi a/p Nadchatiram, defendan yang dinamakan diatas, samada mewakili beliau sendiri, pengkhidmat-pengkhidmatnya atau wakil-wakilnya atau sesiapa pun dihalang secara kekal dan suatu injunksi kekal adalah dengan ini diberikan untuk menghalang Mahadevi a/p Nadchatiram daripada menerbitkan dalam apa-apa bentuk atau menyebabkan untuk menerbitkan penyataan-penyataan bersifat libel dan fitnah terhadap Plaintif.

In other words, this is a permanent injunction prohibiting the defendant from publishing any libelous and scandalous statements against the plaintiff.

On 9 October 2000 the said investigating tribunal issued a letter to the defendant asking for an explanation in respect of her said conduct. This was followed by another letter from the said investigating tribunal dated 24 October 2000 to the defendant. On 27 October 2000 the defendant responded to the investigating tribunal letter of 24 October 2000. In this letter the defendant sought the direction from the investigating tribunal whether she could forward to the disciplinary board several documents that had been produced at the Kuala Lumpur Civil Suit before YA Dato' James Foong where the order of injunction against her had been issued on 22 January 2000. The relevant paragraph of the letter states:

> In the above circumstances and *in the light of the injunction against our client,* as can be seen from (e) and (f) above we are humbly seeking directions from the Advocates & Solicitors Disciplinary Board pertaining to the fact that our client wishes to adduce further documentation and *our client seeks the assurance of the Advocates & Solicitors Disciplinary Board and the complainant that no further defamatory actions or any action pertaining to the order of court dated 22nd January 2000 will be commenced against our client.* (emphasis added).

In respect of the above request by the defendant the advocates & solicitors disciplinary board replied in a letter dated 3 November 2000 rejecting the defendant's request. The relevant paragraph of the letter states:

> Please be informed that the Advocates & Solicitors Disciplinary Board ("the Board") is not in the position to and is unable to provide any form of assurance sought for in your said letter dated 27.10.2000.

The plaintiff, in his letter dated 31 October 2000 to the secretary of the investigating tribunal, had objected strongly to the giving of any form of assurances to the defendant by the disciplinary board. The plaintiff reiterated that the defendant should strictly comply with the injunctive Order of the court.

Despite such rejections, the defendant, *vide* a letter dated 27 November 2000 sent a letter to the Disciplinary Board in which she included all the documents that were produced at the hearing of the Kuala Lumpur High Court Civil Suit No: S5-23-04-1997 and S5-23-08-97 before YA Dato' James Foong which included the notes of proceedings, defendant's written submission, memorandum of appeal and defendant's written submission to the Court of Appeal *vide* Civil Appeal No. W-02-113-00 and also writ of summons and statement of claim, defences and reply to the defence in respect of the Seremban High Court Civil Suit No: 22-52-95.

It was contended by the plaintiff that the defendant had breached the injunctive order of the court dated 22 January 2000 by publishing the documents which she had included in her letter dated 27 November 2000. As such on 19 December 2000 the plaintiff applied, by way of a notis usul *ex parte,* for leave of court to make an application for an order of committal to commit the defendant in prison arising from committing a breach of the said injunctive order. Leave of court was granted on 21 February 2001. Under encl. 201 the plaintiff filed by way of notis usul applying for an Order that the defendant be committed to prison for committing breach of the said injunctive order.

The hearing of this notis usul was fixed before me on 22 January 2003. Prior to this date, at the stage of case management, both parties had agreed that the hearing of this application be conducted by relying on affidavit evidence since

the issues of facts were not in dispute. What was left to be argued were issues of law. As such for purposes of the hearing of this application both parties had agreed to rely on their affidavits and to give written submissions.

It may also be pertinent to note at this injuncture that related to this application there were two other applications filed, one by the plaintiff and the one by the defendant. Under encl. 208 was an application by the defendant for a motion to set aside the plaintiff's application under encl. 201. And under encl. 234 was the plaintiff's application to cross-examine the defendant on the issue of service. However, at the commencement of the hearing before me on 22 January 2003 the defendant decided to withdraw her application under encl. 208 and the plaintiff in turn decided to withdraw his application under encl. 234. With the withdrawals of encls. 208 and 234 only the application under encl. 201 remained to be heard.

For purpose of this action, it is quite pertinent to give serious consideration to the following relevant facts:

1. The Plaintiff's complaint against the Defendant to the Disciplinary Board in a letter dated 27.1.1997 in respect of the Defendant's conduct at the proceedings of Seremban High Court Civil Suit No. 22-61-93 at which proceedings the Defendant had published scandalous and libelous statements, which included imputing criminal conduct on the part of the Plaintiff.

2. On 22.1.2000 Y.A. Dato' James Foong had issued a permanent injunction against the Defendant *vide* Kuala Lumpur Guaman Sivil No: S2(S5)-23-04-1977 tried together with Guaman Sivil No: S5-23-08-1977 in which the Plaintiff sued the Defendant for 9 Counts of libel and slander and the learned Judge found the Defendant liable for all Counts except the 1st, 2nd and 9th Counts. In the order of injunction the Defendant was prohibited from publishing in any form of libelous and scandalous statements against the Plaintiff.

3. The Advocates & Solicitors Investigating Tribunal had on 9.10.2000 and 24.10.2000 issued letters to the Defendant asking for an explanation of her conduct as complained of by the Plaintiff in his complaint letter of 27.1.1977.

4. On 27.10.2000 the Defendant wrote to the Disciplinary Board seeking directions and assurance from the Disciplinary Board that no action be taken against her through adducing further evidence in the light of the Court Order dated 22.1.2000.

5. By a letter dated 3.11.2000 the Disciplinary Board informed the Defendant that they were unable to provide any form of assurance sought by the Defendant.

6. By a letter dated 31.10.2000 the Plaintiff also objected to the above request of the Defendant.

7. On 27.11.2000 the Defendant sent a letter to the Investigating Tribunal which included the followings:

(a) Notes of Proceedings in Kuala Lumpur Civil Suit No: S5-23-04-97 and S5-23-08-97.

(b) The Memorandum of Appeal of the Court of Appeal Civil Appeal No. W-02-113-00.

(c) Defendant's written submission filed in Kuala Lumpur High Court Civil Suit No: S5-23-08-97 and S5(S2)-23-04-97.

(d) Defendant's written submission filed in the Court of Appeal Civil Appeal No. W-02-113-00.

(e) Writ of Summons and Statement of Claim, Defences and Reply to the Defence *vide* Seremban High Court Civil Suit No. 22-52-98.

From the above relevant facts it was clear and not disputed by the defendant that among the documents sent by the defendant to the investigating tribunal *vide* her letter dated 27 November 2000 were the libelous and scandalous materials that YA Dato' James Foong ruled in the case Kuala Lumpur High Court Civil Suit No. S2(S5)-23-04-1997 and S5-23-08-97 at which hearing the learned judge issued an injunctive order dated 22 January 2000 prohibiting the defendant from publishing any libelous and scandalous statement against the plaintiff. It goes without saying that from the notes of proceedings all the libelous and scandalous statements which led to the learned judge finding the defendant liable for all counts except the 1st, 2nd and 9th counts were contained.

The only issue that needed to be determined in this case is whether in law the defendant had contravened the injunctive order of 22 January 2000 issued by the learned judge. This action being a quasi criminal in nature the burden is on the plaintiff to prove beyond reasonable doubt that the defendant had breached the said injunctive order.

The counsel for the plaintiff in his written submissions had contended that, to begin with, the plaintiff had complied with all the necessary requirements for committal proceedings, which includes filing of statement pursuant to O. 52 r. 2(2) of the Rules of the High Court 1980. I was quite satisfied that the plaintiff had fully complied with the necessary procedural requirements for this committal proceedings. At the commencement of the hearing before me the

defendant admitted that the injunctive order of 22 January 2000 was enforceable and such order had been properly served on her. This can be further corroborated by her decision to withdraw her application under encl. 208.

The only matter left to be determined, as agreed by both parties, was the merit of the plaintiff's application.

It was contended by the plaintiff's counsel that what was required of the defendant by the investigating tribunal was to explain her conduct at the Seremban High Court Civil Suit No. 22-61-93 proceedings. But the defendant, quite unnecessarily, decided to produce all the notes of proceedings in the Kuala Lumpur High Court proceedings which were conducted before YA Dato' James Foong in which she was sued for 9 counts for publishing libelous and scandalous statement with the result she was found liable for all counts except the 1st, 2nd and 9th counts. With the findings of the learned judge there could not be any doubt that the notes of proceedings and the defendant's submission contained the libelous and scandalous statements against the plaintiff which the court ordered not to publish. The issuance of the permanent injunction by the learned judge prohibiting the defendant from publishing any libelous and scandalous statements against the plaintiff would certainly have been breached when the Defendant sent the Notes of Proceedings of the case together with the Defendant's written submission to the Disciplinary Board/Investigating Tribunal.

From the facts adduced before me the defendant was fully aware that the publication of such documents to any 3rd party would constitute a breach of the injunctive order. It was for that reason that she sought directions and assurance from the disciplinary board not to bring action against her for adducing additional documents which contained the prohibited statements. The 2nd paragraph of her letter to the disciplinary board dated 27 October 2000 states:

> We wish to inform you that the complainant above named had *vide* Kuala Lumpur High Court Civil Suit No: S5-23-08-1999 consolidated with S2(S5)-23-04-1997 filed 2 defamation actions against our client. These actions were fully tried before the Honourable Justice Dato' James Foong Cheng Yuen and on 22nd January 2000, His Lordship gave judgment in favour of the complainant granting damages of RM3,500,000.00 and furthermore a permanent injunction restraining our client from repeating any defamatory statements. Our client subsequently filed an appeal to the Court of Appeal against the whole of the said decision. The Appeal (Civil Appeal No. W-02-113-00) has been heard and decision reserved.

In another paragraph of the same letter the defendant made a request:

> In the above circumstances and in the light of the injunction against our client, as can be seen from (e) and (f) above we are humbly seeking directions from the Advocates & Solicitors Disciplinary Board pertaining to the fact our client wishes to adduce further documentation and our client seeks the assurance of the Advocates & Solicitors Disciplinary Board and the complainant that no further defamatory actions or any action pertaining to the order of court dated 22nd January 2000 will be commenced against our Client.

Such request for assurances had been rejected by the disciplinary board. In addition the plaintiff had also objected to her request. Yet *vide* her letter dated 27 November 2000 the defendant sent the notes of proceedings of the Kuala Lumpur High Court Civil Suit together with her written submissions which contained all the defamatory statements against the plaintiff that led her to be found liable for defamation on 6 counts by the learned judge. With such evidence I have no doubt whatsoever that the defendant had breached the order of permanent injunction of the court. That injunctive order of the court was still in force and effective. The fact that the defendant had filed an appeal to the Court of Appeal and that the appeal was heard but decision was reserved did not mean that the injunctive order was no longer in force. The injunctive order would only cease to be effective and in force if the Court of Appeal had given a decision setting aside the said injunction. In this case I was unable to find any evidence that the Court of Appeal had given an order setting aside the order of injunction of the learned High Court judge. In such circumstances the order of injunction still remain in force and effective which the defendant must comply. Having considered the whole facts and the circumstances of the case I was quite satisfied that the plaintiff had presented its case beyond reasonable doubt. Such being the position, in order for the defendant to escape liability it was incumbent upon her to create doubts in the plaintiff's case.

In her written submission the defendant raised two main grounds. Firstly, the defendant contended that the disclosure of the court documents to the Advocates & Solicitors Disciplinary Board did not amount to a breach of the terms of the order of injunction of the learned judge. Her reasons for saying so were:

(1) The disclosure to the said Disciplinary Board was a privileged communication; and

(2) The disclosure was mandatory under section 101(4)(a)(i) of the Legal Profession Act, 1976.

This defence of privileged communication raised by the defendant gave rise to two issues, namely:

(1) Whether the Defendant's communication to the Disciplinary Board/ Investigating Tribunal affords absolute privilege within the meaning of the Legal Profession Act 1976; and

(2) Whether in an action for committal the Defence of absolute privilege can be pleaded.

It was strongly argued by the counsel for the plaintiff that the Disciplinary Board and Investigating Tribunal cannot be equated to that of a court of law and therefore they do not enjoy absolute privilege as enjoyed by the High Court or judges. Section 14(1) of the Court of Judicature Act 1964 gives judicial immunity for judges and other persons acting judicially, as long as it is done in good faith. In contrast, s. 111 of the Legal Profession Act 1976 does not confer any judicial immunity for any acts done in the discharge of his judicial duty but only confers protection for acts or things done under the Legal Profession Act 1976. And it only confers protection to the members of the Investigating Tribunal, the Disciplinary Committee, the Disciplinary Board, the Malaysian Bar or the Bar Council. From its wordings it does not confer any protection for those parties appearing before the Disciplinary Board or Investigating Tribunal. As such, the plaintiff's counsel submitted that it was totally misconceived for the defendant to argue that she enjoyed absolute privilege at the proceedings before the Disciplinary Board/Investigating Tribunal.

The counsel for the plaintiff further contended that in an action for committal proceedings the defence of absolute privilege cannot be pleaded. Such defence may be pleaded in an action for defamation. The counsel referred to the case of *Attorney General, Malaysia v. Manjeet Singh Dhillon* [1991] 1 CLJ 216; [1991] 1 CLJ (Rep) 22. The learned counsel for the plaintiff quoted the decision of YA Mohamad Yusof SCJ as follows:

> Raja Aziz contended that the respondent's criticism were relevant to his pleading in order to support his motion before the court. My view to that is, the rule of relevancy of evidence is not a licence to the respondent to be contamelious or to grant any litigant like him to advance contemptuous statement against the court or administration of justice. It is a fallacy to suppose that the respondent had that liberty or privilege. see *R v. Collins.*

Having considered this 1st ground raised by the defendant I fully agree with the submission by the counsel for the plaintiff. Communications to the Disciplinary Board or to the Investigating Tribunal cannot be equated with communication to a court of law. Section 111 of the Legal Profession Act 1976 does not confer any judicial immunity to the defendant when she communicated with the Disciplinary Board/Investigating Tribunal. That section only confers

protection to the members of the Disciplinary Board and the Investigating Tribunal. In other words proceedings before the Disciplinary Board/Investigating Tribunal cannot be equated to a proceedings before a court of law where litigants also enjoy judicial immunity conferred by s. 14(1) of the Court of Judicature Act 1948.

I was also in full agreement with the plaintiff's counsel's contention that in an action for committal proceedings the defendant could not invoke a defence of absolute privilege in the manner that would be available in an action for defamation. Firstly, as explained above, unlike a court of law, any litigant's communication to the Disciplinary Board/Investigating Tribunal would not be covered by absolute immunity within the meaning of s. 111 of the Legal Profession Act 1976.

Secondly, even communications to a court of law that contains defamatory statements should only be done within certain limits. If the limits are exceeded then the defence of absolute privilege would no longer be available.

In the case of *Manjit Singh Dhillon (supra)* YA Gunn Chit Tuan SCJ (as he then was) stated:

> I would also refer to the Australian case of *R v. Collins*, in which the Supreme Court of Victoria held that it is not a defence to a charge of contempt of court that the affidavit relied on as contemptuous is relevant to the proceedings in which it was made, **if such affidavit goes beyond what any litigant could honestly and reasonably think to be no more than necessary or proper to establish a defence to the proceedings, or could honestly and reasonably consider to form the basis of a serious and genuine argument in the proceedings.** (emphasis added).

It must be pointed out that in the instant action the defendant was only asked to explain her conduct at the Seremban High Court Civil Suit by the investigating tribunal. First and foremost, nothing would have happened to the defendant if she decided not to give any explanation to the investigating tribunal except that the investigating tribunal would have to fix a date for the hearing of the disciplinary action against her. Secondly, whatever explanation that she was obliged to give should be confined to what had transpired at the Seremban High Court Civil Suit. Therefore, it was completely irrelevant for the defendant to send the notes of proceedings together with her written submission of the Kuala Lumpur High Court Civil Suits as well as her Memorandum of Appeal to the Court of Appeal together with her written submission, knowing fully well that there was in force an injunctive order prohibiting her from publishing defamatory statements against the plaintiff.

Hence, she had clearly gone beyond the reasonable limit principle as stated in the *Maniit Singh Dhillon* case.

On the evidence before me the defendant could not plead that she was not aware of such contravention when she herself had written the letter of 27 October 2000 to the Disciplinary Board seeking for some form of assurance that no action would be taken against her for breaching the injunction order. After having been in practice for more than 20 years the defendant is expected to know what acts are lawful and what acts are unlawful. On the facts of this case it was quite obvious to me that her act of sending the defamatory documents to the Disciplinary Board/Investigating Tribunal was clearly wilful and contumacious.

After having considered the defendant's defence as a whole I arrived at the conclusion that the defendant had failed to create any doubt in the plaintiff's case. I therefore found her guilty of the contempt of court as alleged by the plaintiff.

Before passing the sentence I requested the defendant to make a plea for mitigation of sentence. She stated that she had no intention to commit the contempt. She also apologised and promised not to commit the offence again. However she continued to say repeatedly that she was not liable for defamation against the plaintiff. In conclusion she claimed that the incident had occurred mainly because of the contumacious conduct of the plaintiff.

I have considered her plea in mitigation and I have also taken into account that the plaintiff's counsel had left the question of sentence entirely to the court. In my view this is a very serious offence committed by a very senior member of the Malaysian Bar. As a member of the Bar and an officer of the court it is incumbent upon her to abide and respect decision of the court. The order of injunction issued by the learned judge was very clear. The defendant was directly involved in the civil suit. The learned judge had made a finding that the defendant was liable for making defamatory statements against the plaintiff. Parties to the proceedings including the defendant must accept the finding of the learned judge, more so when the defendant is an advocate & solicitor. The finding of the learned judge should continue to remain in force until reversed by a court of higher jurisdiction. At the time the defamatory documents were sent to the Disciplinary Board/Investigating Tribunal the Court of Appeal had not given any decision in respect of the learned judge's decision nor did the Court of Appeal disturb the order of injunction of the High Court judge. Having regard to the whole circumstances of this case I was of the view that the acts of the defendant in sending the defamatory documents to the Disciplinary Board/

Investigating Tribunal were most unbecoming of a senior member of the Bar. She had shown to have complete disregard to an order of the High Court. As such merely giving her a caution or a warning for her misdeed would be manifestly inadequate. A more deterrent sentence should be imposed. A fine would serve no purpose because she appeared to be financially loaded. At a session in my chambers before the commencement of this hearing she tried to make an offer of settlement to the plaintiff by promising to give a sum of more than a million ringgit. In view of the above I came to the conclusion that a custodial sentence would be the most appropriate and would act as a deterrence. I therefore sentenced her to three months imprisonment, which I think would be fair and just. I also ordered that the defendant bear the costs of this proceedings.